IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

SHELDON ROOSEVELT WRIGHT, Plaintiff, VS. CORPORAL ASHLEY SAULSBURY, *et al.*, Defendants.	:	**5 : 19-CV-456 (TES)**

RECOMMENDATION

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 in November 2019. (Doc. 1). By Order dated January 3, 2020, Plaintiff's excessive force and deliberate indifference to safety claims were allowed to proceed. (Doc. 7).

Presently pending herein is Defendants' Motion to Dismiss. (Doc. 17). The Court notified the Plaintiff of the filing of the pending motion to dismiss and directed him to respond thereto within twenty-one (21) days of the Court's Order. (Doc. 19). Plaintiff has responded to Defendants' Motion (Doc. 20), and Defendants have replied (Doc. 21).

According to Plaintiff's Complaint, while he was confined at Baldwin County Detention Center ("BCDC") in June 2019, Defendant Ford repeatedly threatened Plaintiff and sent him to medical isolation without clothing.[1] After repeated threats, denial of water and "being maced", Plaintiff pulled the fire alarm to get the attention of the Sheriff. In response, Defendant Ford ordered Plaintiff handcuffed while unclothed, "paraded past the

[1] Defendants maintain that Defendant Ford was incorrectly identified by Plaintiff, and that she is actually Lieutenant Tamica Glenn.

kitchen area and placed in segregation", where Plaintiff was ordered by Defendant Ford to be shot with a taser while Plaintiff was wet and laying in a pool of water. Emergency medical professionals had to be summoned to remove the taser prongs, and Plaintiff was then placed in segregation for a month and a half without mail privileges. Plaintiff further alleges that Defendant Saulsbury publicly called him a "snitch", exposing him to retaliation from other inmates, exhibiting Defendant Saulsbury's deliberate indifference to Plaintiff's safety.

In their Motion to Dismiss, Defendants maintain that Plaintiff's claims are unexhausted. (Doc. 20). Discovery was stayed as to all issues except the exhaustion of administrative remedies. (Doc. 19).

A motion to dismiss can be granted only if Plaintiff's Complaint, with all factual allegations accepted as true, fails to "raise a right to relief above the speculative level". *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 545 (2007).

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556, 570).

In regard to exhaustion of administrative remedies, the Prison Litigation Reform Act

("PLRA") mandates that all prisoners wishing to bring suits pursuant to § 1983 based on conditions of confinement violations must exhaust all available administrative remedies prior to filing a federal action. The Act provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. §1997e (a). In order to satisfy the exhaustion requirement, an inmate must fully pursue all available administrative remedies, including pursuing and completing all levels of appeal. *Moore v. Smith*, 18 F. Supp. 2d 1360, 1363 (N.D.Ga. 1998); *Harper v. Jenkin*, 179 F.3d 1311 (11th Cir. 1999) (inmate who failed to seek leave to file an out-of-time grievance failed to exhaust his administrative remedies as required by the PLRA). "An inmate must use all steps in the administrative process and comply with any administrative deadlines and other critical procedural rules before exhaustion is proper. Thus, if an inmate has filed an 'untimely or otherwise procedurally defective administrative grievance or appeal', he has not properly exhausted his administrative remedies." *Woodford v. Ngo*, 548 U.S. 81, 89-92 (2006).

The Eleventh Circuit has held that

> deciding a motion to dismiss for failure to exhaust administrative remedies is a two-step process. First, the court looks to the factual allegations in the defendant's motion to dismiss and those in the plaintiff's response, and if they conflict, takes the plaintiff's version of facts as true. If, in that light, the defendant is entitled to have the complaint dismissed for failure to exhaust administrative remedies, it must be dismissed. . . . If the complaint is not subject to dismissal at the first step, where the plaintiff's allegations are assumed to be true, the court then

> proceeds to make specific findings in order to resolve the disputed factual issues related to exhaustion.

Turner v. Burnside, 541 F.3d 1077, 1082 (11th Cir. 2008).

In his response to Defendants' Motion to Dismiss, Plaintiff states that he filed grievances at BCDC regarding the events underlying this lawsuit, but dropped the grievances when he was assured by Captain Robert Adams that Plaintiff would soon be going to a rehab program, and Adams asked that Plaintiff drop the grievances "as a favor to him . . . because [Ford] was a vital part of his administration". (Doc. 20, pp. 1-2). Thus, Plaintiff's pending claims are not subject to dismissal pursuant to the first step of the *Turner* analysis. *See Whatley v. Warden, Ware State Prison*, -- F.3d --, 2015 WL 5568465 *5 (11th Cir. 2015) (under *Turner* analysis, court must accept plaintiff's facts as true and ask whether, given those facts, the alleged grievances exhausted administrative remedies; court must make specific findings to resolve disputed factual issues related to exhaustion).

Defendants present the declaration testimony of Sarah Humphries, a support services administrative assistant at the Baldwin County Sheriff's Office, who states that she is a records custodian for BCDC and that attached records are true and accurate copies of files kept at the Baldwin County Sheriff's Office and Detention Center "made at or near the time of [Plaintiff's] incarceration at the BCDC". (Doc. 17-2, pp. 1-2). Attached to Humphries' declaration is a copy of what appears to be detention center policies and procedures, which includes a grievance procedure. *Id.* at pp. 131-132. According to a summary entry, Plaintiff viewed the detention center handbook, which apparently includes the records submitted by

Defendants, on May 27, 2019. *Id.* at p. 175.

Defendants' records show that Plaintiff filed three (3) grievances at BCDC on June 6, 2019, all of which bear the notation that "desired resolution resolved [sic] and inmate upon own self cancelling grievance", with the notation signed by Plaintiff on June 7, 2019. *Id.* at pp. 187-89. At least one of these grievances deals directly with the claims and events underlying this lawsuit. *Id.* at p. 189.

Defendants contend that Ms. Humphries' declaration and the attached records show that Plaintiff did not properly grieve his claims and therefore failed to exhaust administrative remedies, despite his filing of grievances, as Plaintiff withdrew his grievances pertaining to the events underlying this lawsuit.

In response to Defendants' Motion to Dismiss, Plaintiff states that after he filed his grievances, he

> was talked to by Captain Robert Adams who upon verbal contract . . . assured me that I would be leaving BCSO soon to go to a rehab program. He also acknowledged Mrs. Tamika Ford Glenn's targeting of me due to prior dealings and said he would speak with her. He asked as a favor to him that I would cancel my grievances because she was a vital part of his administration. I agreed upon the terms. Captain Adams did not fullfill [sic] his obligations of this verbal agreement. This was in June. Mrs. Glenn was not restricted from dealings with me and I was housed in BCSO until September of 2019. This was done to the detriment of my well being physically and mentally as I was housed in segragation [sic] sometimes and had to rely upon Mrs. Glenn for food delivered to my cell. . . Mrs. Glenn and Captain Adams also served as the Grievance Officers which biased and unbalanced their ability to rightfully address grievances concerning themselves. This conflict impaired and diluted the clear path to exhaust all administrative remedies.

(Doc. 20, pp. 1-2).

"[W]hen a state provides a grievance procedure for its prisoners . . . an inmate alleging harm suffered from prison conditions must file a grievance and exhaust the remedies available under that procedure before pursuing a § 1983 lawsuit." *Brown v. Sikes*, 212 F.3d 1205, 1207 (11th Cir. 2000). "[T]o properly exhaust administrative remedies prisoners must complete the administrative review process in accordance with the applicable procedural rules – rules that are defined not by the PLRA, but by the prison grievance process itself." *Jones v. Bock*, 549 U.S. 199, 218 (2007); *see also Toenniges v. Georgia Dept. of Corrections*, 600 F. A'ppx 645, 648 (2015) (prisoner must complete review process according to rules set forth in prison grievance system itself).

The Court finds that the Plaintiff has not exhausted his claims against Defendants, in that, he has not utilized all available remedies to grieve the alleged offenses. The declaration testimony and attached records in support of the Defendants' Motion to Dismiss establish the presence of a grievance process at BCDC, which was made known to Plaintiff, and establishes that the Plaintiff did not complete the process regarding his claims prior to filing this lawsuit. The record reveals, and the Court finds, that Plaintiff had not properly completed the grievance process prior to filing this lawsuit, in that Plaintiff dropped the grievances that pertained to his claims herein. "[T]o properly exhaust administrative remedies prisoners must complete the administrative review process in accordance with the applicable procedural rules – rules that are defined not by the PLRA, but by the prison grievance process itself." *Jones v. Bock*, 549 U.S. 199, 218 (2007); *see also Toenniges*, 600 F. A'ppx at 648 (prisoner must complete review process according to rules set forth in prison grievance system itself).

The Court also notes that there is no indication that Plaintiff's use of the grievance process was actually prohibited by jail officials, by means of threat or otherwise. The Supreme Court has noted that "the PLRA contains its own, textual exception to mandatory exhaustion. Under § 1997e(a), the exhaustion requirement hinges on the 'availab[ility]' of administrative remedies. . . And that limitation on an inmate's duty to exhaust . . . has real content." *Ross v. Blake*, 136 S. Ct. 1850, 1858 (2016). An administrative remedy may be unavailable if "it operates as a simple dead end – with officers unable or consistently unwilling to provide any relief to aggrieved inmates, . . . [if it is] so opaque that it becomes, practically speaking, incapable of use . . . [or if] prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 1859-60.

In order to demonstrate that administrative remedies were unavailable, the Plaintiff must point to specific facts showing that officials prohibited or blocked his use of the grievance process. *Miller v. Tanner*, 196 F.3d 1190, 1194 (11th Cir. 1999) (inmate was not required to file an appeal after being told unequivocally, and in writing, that appeal was precluded; plaintiff produced memorandum denying grievance and informing plaintiff that no appeal was available); *Turner*, 541 F.3d at 1085 (prison official's serious threats of retaliation against an inmate for pursuing a grievance render administrative remedies unavailable). "To demonstrate [] unavailability under *Turner*, a prisoner must establish that: (1) the threat actually deterred him from lodging a grievance or pursuing a particular part of the administrative process; and (2) the threat is one that would so deter a reasonable inmate of ordinary firmness and fortitude." *Cole v. Secretary Dept. of Corrections*, 451 F.

A'ppx 827, 828 (11th Cir. 2011).

Although an inmate "need not exhaust unavailable [remedies]", there is no indication that the facts as alleged by Plaintiff established the unavailability of administrative remedies. *Ross,* 136 S. Ct. at 1860. The Supreme Court has recognized that administrative remedies become unavailable "when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation". *Id.* at 136 S. Ct. 1858. The Court stated in *Ross* that

> appellate courts have addressed a variety of instances in which officials misled or threatened individual inmates so as to prevent their use of otherwise proper procedures. As all those courts have recognized, such interference with an inmate's pursuit of relief renders the administrative process unavailable.

Id.

See also Woodford, 548 U.S. at 103-04 (Breyer, J., concurring) (suggesting that PLRA's "proper exhaustion" requirement is subject to "well-established exceptions" such as "unavailable administrative remedies"); *Hemphill v. New York,* 380 F.3d 680, 689 (2d Cir. 2004) (recognizing that "the behavior of [a] defendant[] may render administrative remedies unavailable," and thus PLRA's exhaustion requirement inapplicable).

Herein, the facts as presented by Plaintiff do not establish that interference from Captain Adams rendered the grievance process at Baldwin County Detention Center unavailable to Plaintiff. *See Turner,* 541 F.3d at 1082 (requiring a court to compare "the factual allegations in the defendant's motion to dismiss and those in plaintiff's response", and accepting plaintiff's version where there is a conflict.). According to Plaintiff, Captain Adams told Plaintiff that he would soon be transferred and that Captain Adams would

resolve the conflict with Defendant Ford, in exchange for Plaintiff dropping his grievances. Plaintiff maintains that he was not transferred until three (3) months later and that Adams did not resolve the issue with Defendant Ford. However, Plaintiff does not allege or establish that Captain Adams made use of threat or force in addressing the matter with Plaintiff, nor does he allege or establish that he was somehow not free to reject Captain Adams' request to drop the grievances. This request to which Plaintiff agreed thus does not rise to the level of an impediment making the grievance process unavailable to Plaintiff. The grievance policy in place at the BCDC provides that "[w]henever possible, inmate complaints should be resolved in an informal manner without filing a formal grievance. Many complaints can be and should be resolved directly between inmates and staff." (Doc. 17-2, p. 131).

Even if the Court were to consider Captain Adams' discussion with Plaintiff to be interference with Plaintiff's access to the grievance process at BCDC such that the grievance process became unavailable to Plaintiff, the interference was removed once Plaintiff was transferred to another facility and was then able to seek to file an out-of-time grievance. *See Greene v. Rosier*, 2013 WL 596314 (S.D.Ga. 2013) (adopted by Order 2013 WL 596346) (Plaintiff's Complaint was unexhausted, even if court assumed for the sake of argument that plaintiff's decision to drop his grievances was due to retaliation threats from defendant officer, as plaintiff could have resumed grieving his claims once the threat of retaliation was removed with his transfer to another facility). Plaintiff indicates that he was housed at Georgia Diagnostic State Prison in Jackson at the time he filed the Complaint, and that he had been transferred to that facility after being housed at the Baldwin County Detention Center. (Doc. 1, p. 2). "Even assuming – without deciding – that no grievance

procedures were available to [Plaintiff] at [his initial place of confinement], the record supports that [Plaintiff] did have grievance procedures available to him when he transferred to [Jackson, a prison within the Georgia Department of Corrections]. Yet he failed to exhaust them." *Bryant v. Rich,* 530 F.3d 1368, 1373 (11th Cir. 2008).

Conclusion

As Plaintiff did not exhaust his claims prior to filing his Complaint, it is the recommendation of the undersigned that Defendants' Motion to Dismiss be **GRANTED**, and that Plaintiff's Complaint be **DISMISSED without prejudice**.

Objections

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to the recommendations herein, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of

justice."

SO RECOMMENDED, this 6th day of January, 2021.

s/ ***Thomas Q. Langstaff***
UNITED STATES MAGISTRATE JUDGE

asb